

HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

COOKE AQUACULTURE PACIFIC, LLC,

Defendant.

Case No. 2:17-cv-01708-JCC

[PROPOSED] ORDER GRANTING
PLAINTIFF'S FIRST MOTION FOR
PARTIAL SUMMARY JUDGMENT

BEFORE THE COURT is Plaintiff's First Motion for Partial Summary Judgment
("Motion").

Plaintiff Wild Fish Conservancy ("Conservancy") moves for summary judgment under
Rule 56 and requests that the Court find that Defendant Cooke Aquaculture Pacific, LLC
("Cooke") has violated certain terms of the eight National Pollutant Discharge Elimination
System ("NPDES") permits issued under section 402 of the Clean Water Act ("CWA"), 33
U.S.C. § 1342, for Cooke's eight commercial salmon farms in Puget Sound.

Specifically, the Conservancy requests that the Court grant summary judgment declaring
that Cooke's Pollution Prevention Plans implemented from September 14, 2012, which is the

beginning of the statute of limitations period, to the present violate Condition S6 of the NPDES permits. Cooke has implemented four Pollution Prevention Plans during this period: a plan dated April 2012 was in effect until January 2015 (“2012 Pollution Prevention Plan”); a plan dated January 2015 was effective until April 2017 (“2015 Pollution Prevention Plan”); a plan dated April 2017 was in effect only a few months until October 2017 (“April 2017 Pollution Prevention Plan”); and a plan dated October 2017 remains in effect (“October 2017 Pollution Prevention Plan”). The Conservancy requests that the Court determine that these plans violate Condition S6 of the NPDES permits by failing to adequately address inspections of the net pen cages, the storage of chemicals, and the handling of blood from fish harvest activities.

The Conservancy further requests that the Court grant summary judgment declaring that Cooke’s Fish Release Prevention and Monitoring Plans (“Release Prevention Plans”) implemented from September 14, 2012 to October 2018 violate Condition S7 of the NPDES permits. Cooke implemented three Release Prevention Plans during that period: a plan dated August 2012 was in effect until June 2014 (“2012 Release Prevention Plan”); a plan dated June 2014 was in effect until January 2017 (“2014 Release Prevention Plan”); and a plan dated January 2017 was effective until October 2018 (“2017 Release Prevention Plan”). The Conservancy requests that the Court determine that these plans violate Condition S7 of the NPDES permits by failing to adequately address procedures to track the number of fish lost from the net pens to predation and escapements and the inspection of underwater mooring components for the net pens.

The Court finds that there are no material facts in dispute with respect to the relief requested by the Motion and that partial summary judgment should be GRANTED.

Accordingly,

IT IS ORDERED that:

1
2 1. Cooke has violated Condition S6 of the eight NPDES permits from September 14,
3 2012 to the present as follows:

4 a. Cooke's 2012 Pollution Prevention Plan, 2015 Pollution Prevention Plan,
5 April 2017 Pollution Prevention Plan, and October 2017 Pollution Prevention Plan violate
6 Condition S6.F of the NPDES permits by failing to adequately address annual inspections of the
7 main cage structures of the net pens;

8 b. Cooke's 2012 Pollution Prevention Plan, 2015 Pollution Prevention Plan,
9 April 2017 Pollution Prevention Plan, and October 2017 Pollution Prevention Plan violate
10 Condition S6.D of the NPDES permits by failing to adequately address the storage and disposal
11 of disease control chemicals used at the net pens; and
12

13 c. Cooke's 2012 Pollution Prevention Plan, 2015 Pollution Prevention Plan,
14 April 2017 Pollution Prevention Plan, and October 2017 Pollution Prevention Plan violate
15 Condition S6.E of the NPDES permits by failing to adequately address the collection, storage,
16 and disposal of blood from harvest operations at the net pens; and
17

18 2. Cooke has violated Condition S7 of the eight NPDES permits from September 14,
19 2012 to October 2018 as follows:

20 a. Cooke's 2012 Release Prevention Plan, 2014 Release Prevention Plan, and
21 2017 Release Prevention Plan violate Condition S7.6 of the NPDES permits by failing to
22 adequately address procedures for the routine tracking of the number in fish in the net pens that
23 are lost to predation and to escapements; and
24

25 b. Cooke's 2012 Release Prevention Plan, 2014 Release Prevention Plan, and
26 2017 Release Prevention Plan violate Conditions S7.1 and S7.2 of the NPDES permits by calling
27
28
29

1 for underwater inspections of mooring components at the net pens at less frequent intervals than
2 required by the NPDES permits.

3
4 Dated this _____ day of _____, 2019.

5
6
7 _____
8 Honorable John C. Coughenour
9 United States District Judge
10
11

12 Presented by:

13 KAMPMEIER & KNUTSEN, PLLC
14

15 By: s/ Brian A. Knutsen
16 Brian A. Knutsen, WSBA No. 38806

17 EARTHRISE LAW CENTER

18 By: s/ Lia Comerford
19 Lia Comerford (OSB No. 141513), *admitted pro hac vice*

20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28
29